

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

UNITED STATES OF AMERICA,	)	
	)	
v.	)	Docket No. 2:17-cr-00088-NT
	)	
MATTHEW ROAF,	)	
	)	
Defendant.	)	

**ORDER ON DEFENDANT’S MOTION  
FOR TESTING OR RELEASE OF SAMPLES**

The Defendant has requested to retest Exhibits #1 and #3 from DEA Case Number CG-16-0045 (LIMS Case No. 2016-SFL2-01318) currently stored at the U.S. Drug Enforcement Administration (“**DEA**”) Northeast Laboratory (New York, New York) (the “**Exhibits**”). Over the Government’s objection, the Defendant’s motion is **GRANTED**. In connection with such retesting, it is hereby **ORDERED** as follows:

1. The Government shall extract samples from the Exhibits sufficient in its discretion to perform all practicable qualitative and quantitative analyses. If the entire Exhibits are required, due to the small amount remaining, the Defendant will provide the Government a stipulation regarding the Exhibits.

2. The Government shall deliver, in a manner it deems consistent with the type and quantity of controlled substance at issue, and considering the expert’s proximity to the originating DEA laboratory, a representative sample of the Exhibits, or the samples, if necessary, to the Defendant’s chosen laboratory, which has been specifically identified as NMS Labs, which is physically located at 2300 Stratford Avenue, Willow Grove, Pennsylvania 19090 and with a mailing address of the same.

3. The Defendant's expert shall possess and present in advance, as a prerequisite to the delivery of the Exhibits, a current and valid DEA registration sufficient to perform the analyses of the schedule of controlled substance at issue, in accord and in full compliance with the applicable DEA registration procedures, found at 21 C.F.R. § 1301.11 *et seq.*

4. Upon delivery of the Exhibits to the Defendant's expert, the expert shall sign and return by Registered Mail, Return Receipt Requested, all accompanying forms (including Form DEA-12, "Receipt For Cash Or Other Items") indicating receipt of the samples. The Defendant's expert shall conduct the identification and quantitative analysis (calculated as the hydrochloride salt form), and shall provide the Government with a Declaration Under Penalty of Perjury pursuant to 28 U.S.C. § 1746. The Declaration will state the quantity of each Exhibit consumed during analysis (if any) as well as the weight of each Exhibit both received from and returned to the Government. The Declaration shall be delivered to the Government immediately upon completion of the analyses ordered herein.

5. The Defendant shall provide the Government with a copy of the results or reports of the analyses performed by the Defendant's expert, in accordance with Fed. R. Crim. P. 16(b)(1)(B).

6. The Defendant shall coordinate with the Government a convenient date and time for the analyses ordered herein, which date shall be within thirty (30) days of the date of this Order.

7. The Defendant's expert is responsible for safeguarding the Exhibits and preserving the chain of custody in a manner to faithfully protect its integrity.

8. The Defendant's expert is responsible for repackaging each internal sample/exhibit package into a heat-sealed evidentiary envelope, which heat-sealed container shall be placed into a separate heat-sealed envelope, which shall be secured in such a manner that tampering will be readily observable.

9. Upon completion of any other reanalysis, the Defendant's expert shall return any residual substance and its original packaging to the originating DEA laboratory by secure method, consistent with Federal law, including but not limited to United States Department of Transportation regulations regarding the handling, packaging, and transportation/shipping of hazardous substances/dangerous goods and any other federal law relating to the handling, packaging, and transportation/shipping of hazardous substances/dangerous goods.

10. All reanalysis must be completed within fourteen (14) calendar days from the date of receipt of the sample(s)/exhibit(s). Return of any residual substance and its original packaging must occur within five (5) calendar days following completion of the reanalysis.

11. The Government reserves the right to argue that any failure to follow the aforementioned procedures will render the reanalysis results scientifically unreliable, as those terms are used in the Federal Rules of Evidence or its state equivalent.

12. Any failure by the Defendant to maintain the proper chain of custody will not render the Exhibits inadmissible for this reason.

SO ORDERED.

/s Nancy Torresen  
United States Chief District Judge

Dated this 24th day of April, 2018.